

FILED

FEB 11 2005

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

JOHNATHAN WISE,

Petitioner - Appellant,

v.

CAROL PORTER,

Respondent - Appellee.

No. 03-35502

D.C. No. CV-01-01136-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Argued and Submitted February 8, 2005
Seattle, Washington

Before: O'SCANNLAIN, McKEOWN, and BEA, Circuit Judges.

Wise has abandoned his ineffective assistance of counsel claim predicated on the diminished capacity defense. He now pursues his claim with respect to “bolstering” of his self-defense argument. The Supreme Court of Washington’s

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

determination that Wise did not meet his burden to sustain his ineffective assistance of counsel claim vis-à-vis failure to introduce mental capacity/psychiatric evidence was not contrary to and did not involve an unreasonable application of established federal law, as determined by the Supreme Court of the United States. 28 U.S.C. § 2254(d)(1). Evidence proffered during the district court's evidentiary hearing process was not sufficient to change this result.

The district court's denial of petitioner's § 2254 petition is AFFIRMED.